

REMARKS

I. SUBSTITUTE DECLARATION

Applicants will submit a signed substitute declaration that contains a priority reference to PCT/US98/21487 when allowable subject matter is indicated.

II. PROPOSED DRAWING CORRECTIONS

Applicants submit herewith proposed drawing corrections which, together with the amendments to the specification made herein, resolve all of the issues raised in the Examiner's objections in paragraphs 4-10 of the Office action. More specifically, the paragraph of the Office action and the action taken by Applicant to resolve the drawing objection are provided in the table below:

Office action paragraph	Action taken by Applicants
4	Numeral 12 indicating woven fabric layer inserted into Fig. 1 in proposed drawing correction.
5	Typographical error corrected at page 16 of specification.
6	Replacement of numeral 112 with numeral 12 in Fig. 4 in proposed drawing correction, and at page 31 of specification.
7	Removal of numeral 12 from page 27 of specification to avoid confusion.
8	Numeral 126 in Fig. 4 replaced with numeral 26 to correspond to specification.
9	Correction of typographical error in specification.
10	Numeral 115 in Fig. 3 replaced with numeral 126, to correspond with specification.

Accordingly, the Examiner's approval of the proposed drawing corrections is requested, after which the objections to the drawings should be withdrawn.

III. REPLACEMENT ABSTRACT

Although an Abstract was provided as part of the PCT specification (of which this application is a national phase entry), Applicants provide a replacement Abstract as a separate sheet.

IV. OBJECTIONS TO THE SPECIFICATION AND CLAIMS

In paragraph 12, the Examiner objects to the specification because it allegedly contains an embedded hyperlink, and requires that Applicants delete the hyperlink. Applicants do not intend that the URL address appearing at page 17 of the specification to be an active or live hyperlink when the specification is placed on the U.S. PTO web page. Accordingly, Applicants request that the URL address be retained in the specification, and that FTO disable the any hyperlink when preparing the text to be loaded into the PTO web database, in accordance with MPEP § 608.01.

With respect to the objection to claim 19 as being unsupported by the specification in paragraph 13 of the Office action, Applicants have amended claim 19 to recite that the resilient layer is disposed between the top fabric layer and the backing fabric. Applicants have also amended the specification at page 16 to provide for disposition of the resilient layer between the top fabric layer and the backing layer. As this is fully supported by original claim 19, no new matter has been added.

With respect to the objection to claim 8 made at paragraph 14 of the Office action, Applicants have amended the claim to recite poly(trimethylene terephthalate), as suggested by the Examiner.

V. INDEFINITENESS REJECTION

In paragraphs 15-17, the Examiner has rejected claims 10-13 under 35 U.S.C. § 112, second paragraph, as indefinite. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

Applicants have amended claims 10 and 11 to remove the term “highly”; accordingly, Applicants submit that there is no arguable ambiguity in these claims, and that this rejection should be withdrawn.

VI. ANTICIPATION REJECTIONS

A. Vinod (U.S. Patent No. 5,965,232)

In paragraph 19 of the Office action, the Examiner has rejected claims 1, 3, and 4 under 35 U.S.C. § 102(e) as anticipated by Vinod. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

Contrary to the Examiner’s assertions, the “stabilizing layer” of Vinod does not “correspond to Applicant’s backing fabric.” To the contrary, as both the specification at pages 29-30, and the originally filed claims (in particular note claims 2 and 22) indicate, the backing fabric and the reinforcement web of the claimed invention are two distinct and separate components of the floor covering, with the backing fabric generally disposed beneath any reinforcement web. In Vinod, the stabilizing layer is disposed between the decorative fabric and the cushioning layer. By contrast, the backing fabric of the claimed invention is disposed below any resilient layer. See the specification as cited above, and original claim 22.

Because Vinod fails to teach the backing fabric of the claimed floor covering, it does not anticipate claims 1, 3, or 4, and the Examiner's rejection should be withdrawn.

B. Cooney (U.S. Patent No. 3,823,056)

In paragraph 20 of the Office action, the Examiner has rejected claims 1, 2, 9, 10, 11, 16, and 19 under 35 U.S.C. § 102(b) as anticipated by Cooney. Applicants respectfully traverse this rejection.

Cooney is directed not to a woven face-cloth floor covering material, but to a floor covering structure that incorporates an anti-static coating between two polymeric backing layers. See column 2, lines 18-29. The Examiner asserts that Cooney teaches a woven face cloth fabric at column 3, lines 13-19. However, Cooney's use of the term "woven" appears to be merely a reference to the method for affixing the carpet pile to the primary backing, not to the use of a woven face cloth. As shown in the drawing and described in column 3, the fibrous pile can be attached to the primary backing by different techniques, including weaving, tufting, etc. See column 3, lines 19-24. The very point of the antistatic layer of Cooney is that it is effective without contact with the ends of the fibers forming the fibrous pile. See column 3, lines 33-35.

It is apparent from the disclosure of Cooney that Cooney is limited to fibrous pile carpets, and does not teach or suggest a woven face cloth, contrary to the Examiner's assertions. As a result, Cooney does not anticipate the rejected claims, and the Examiner's rejection should be withdrawn.

VII. OBVIOUSNESS REJECTIONS

A. Terry et al. in view of Hamilton et al.

In paragraph 22 of the Office action, the Examiner has rejected claims 1, 2, 9, 16, 19, 20, and 21 under 35 U.S.C. § 103(a) over Terry et al. (WO 93/08325) in view of Hamilton et al. (U.S. Patent No. 5,198,277). Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The Examiner asserts that it has been known in the art to use woven backing layers for carpet and carpet tile. Whether this is true or not is irrelevant to the issue of whether Applicants' claims are obvious over the combined teachings of the cited references. Neither reference teaches or discloses a woven face cloth, i.e., a woven fabric top layer, as recited by Applicants' claims. In fact, the Examiner admits that Terry et al. teach a tufted face cloth, not a woven face cloth. Hamilton et al. specifically state that their floor covering is pattern tufted, fusion bonded material, and show this in numerous drawings. Because neither reference even remotely suggests using a woven top layer, even if the references were combined in the manner suggested, the claimed invention would not be obtained. Because the Examiner has failed to establish a *prima facie* case of obviousness, the rejection should be withdrawn.

B. Vinod

In paragraph 23 of the Office action, the Examiner has rejected claims 6 and 7 under 35 U.S.C. § 103(a) over Vinod. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The Examiner relies on Vinod as teaching the denier limitations of Applicants' claims. However, as explained above with respect to the anticipation rejection over Vinod, there is no teaching in Vinod of Applicants' backing layer because the backing fabric and the reinforcing web of Applicants' material are different layers; in rejecting the claims over Vinod, the Examiner has improperly conflated these two different layers, and created an improper correspondence between the reinforcing fabric of Vinod and the backing fabric of Applicants' claims. Because no such correspondence exists, Vinod fails to teach the recited backing fabric. Because there is no teaching or suggestion to incorporate such a backing fabric in the material of Vinod, the Examiner has failed to establish a prima facie case of obviousness. As a result, this rejection should be withdrawn.

C. Vinod in view of Howell et al.

In paragraph 24 of the Office action, the Examiner has rejected claims 5 and 8 under 35 U.S.C. § 103(a) over Vinod in view of Howell et al. (U.S. Patent No. 5,645,782). Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

In addition to failing to teach the type of polyester materials used in the woven face cloth of the claimed floor covering, Vinod also fails to teach the backing fabric recited in the claims, as indicated above. Howell et al. discloses nothing to cure this deficiency, as it is related only to methods for making yarn. Again, the Examiner has failed to establish a prima facie case of obviousness, and the rejection should be withdrawn.

D. Higgins in view of Vinod

In paragraph 25 of the Office action, the Examiner has rejected claims 1-4, 9-12, 15-19, and 22-25 under 35 U.S.C. § 103(a) over Higgins (WO 95/23691) in view of Vinod. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

The Examiner admits that Higgins is drawn to a pile face cloth material, and fails to disclose a woven face cloth. In addition, the Examiner recognizes that Higgins fails to disclose the composition of its precoat layer, or the use of a woven fiberglass reinforcing layer. In an attempt to cure this deficiency, the Examiner turns to Vinod to supply the missing elements. However, other than ease of cleaning, the Examiner does not provide any explanation of why one of ordinary skill in the art would discard the pile face cloth of Higgins and replace it with the woven material of Vinod. Instead, the Examiner cites alleged advantages of the Vinod material as compared to vinyl flooring material.

This is not sufficient motivation for one of ordinary skill in the art to discard the tufted or bonded pile face cloth of Higgins. The entire point of the Higgins disclosure is the production of a polyurethane backing layer without the need for precise temperature control of the polyurethane layer and the fabric layer and without the need for an intermediate layer of material. See page 2, line 20 to page 3, line 14. Higgins specifically limit this disclosure to carpet fabric having a pile-forming portion. See page 4, lines 8-10. In addition, one of the objects of Higgins invention is to adhere a layer of reinforcement material to the underside of a pile-containing carpet without the need for a separate adhesion step. See page 7, lines 14-23.

Because the Higgins disclosure is so focused on producing a pile carpet material, it effectively teaches away from discarding a pile face cloth, and thereby not achieving the objects of the Higgins invention, in favor of a woven face cloth. As a result, there is no motivation to combine the teachings of Higgins with those of Vinod, and the Examiner has failed to establish a *prima facie* case of obviousness.

In addition, Higgins uses a urethane foam in order to avoid the need for an adhesive layer. Vinod requires the use of an adhesive to bond the stabilizing layer to the "decorative fabric." One of ordinary skill in the art would not have been motivated to take the teachings from a reference to producing a pile face cloth product and apply them to a completely different form of facecloth product with a realistic expectation that an adhesive would thus be rendered unnecessary.

Even if the teachings of Vinod were combined with those of Higgins in the manner suggested, the claimed invention would not be obtained. As described above, Vinod fails to teach or suggest a backing fabric, as recited in Applicants' claims. For this reason, as well, the Examiner has failed to establish a *prima facie* case of obviousness.

E. Higgins in view of Vinod and further in view of Hamilton et al.

In paragraph 26 of the Office action, the Examiner has rejected claims 10, 11, and 14 under 35 U.S.C. § 103(a) over Higgins, Vinod, and Hamilton et al. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

Hamilton et al. fails to cure the deficiencies in Vinod and Higgins noted above. Moreover, one of ordinary skill in the art would have been positively

dissuaded from using the latex of Hamilton et al. in a composite using a woven fabric of Vinod because the purpose of the EVA latex, as disclosed in Higgins, is to lock the tufted fibers into the primary backing. This is not necessary if a woven fabric is used. Moreover, there is no need for the adhesive properties of such a latex when the polyurethane backing of Higgins is used. In fact, replacing the polyurethane of Higgins with an EVA latex would destroy one of the advantages of the Higgins disclosure; one of ordinary skill in the art would therefore not have been motivated to make the modification suggested by the Examiner. As a result, the Examiner has failed to establish a *prima facie* case of obviousness for this reason as well, and the rejection should be withdrawn.

F. Higgins in view of Vinod, further in view of Blakely et al.

In paragraph 27 of the Office action, the Examiner has rejected claim 13 under 35 U.S.C. § 103(a) as obvious over Higgins and Vinod, and further in view of Blakely et al. (WO 90/14107). Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

Blakely et al does not cure the deficiencies of Higgins and Vinod noted above. Thus, there remains a lack of motivation to combine the teachings of Higgins with those of Vinod, which lack is not supplied by Blakely et al. Further, Blakely et al. does not supply the missing backing fabric recited in the claims. Thus, even if Blakely et al. were combined with Higgins and Vinod, the claimed invention would not be obtained, and the Examiner will have failed to establish a *prima facie* case of obviousness. Accordingly, this rejection should be withdrawn.

G. Higgins in view of Vinod and Terry et al.

In paragraph 28 of the Office action, the Examiner has rejected claims 20, 21, 26, and 27 under 35 U.S.C. § 103(a) as obvious over Higgins in view of Vinod and Terry et al. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

In addition to failing to cure the deficiencies of Higgins and Vinod described above, the Examiner's citation of Terry et al. fails to establish a *prima facie* case of obviousness because one of ordinary skill in this art would not have been motivated to combine the teachings of Terry et al. concerning urethane modified bitumens with the teachings of Higgins.

The urethane-modified bitumen backings disclosed by Terry et al. are disclosed to be alternatives to bitumen backings which avoid the disadvantages associated with bitumen backings. There is no suggestion in either Terry et al. or Higgins (or Vinod) that the urethane-modified bitumen backings disclosed by Terry et al. are an acceptable substitute for polyurethane foam backings, as disclosed by Higgins. There is no suggestion that the urethane modified bitumen backings of Terry et al. would possess the properties that make a polyurethane foam desirable. Moreover, there is no suggestion to use urethane-modified bitumen as an adhesive layer because Higgins teaches that the polyurethane can be used to replace the adhesive layer. This is disclosed as one of the objects and advantages of the Higgins disclosure.

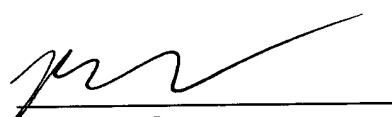
The Examiner has combined the reference teachings without any explicit or implicit motivation from the cited references to do so, instead relying upon a

hindsight reconstruction of Applicants' invention using the claims as a template. This is impermissible use of hindsight; as a result, the Examiner has failed to establish a *prima facie* case of obviousness, and the rejection should be withdrawn.

Applicant respectfully submits that the claims are in condition for immediate allowance, and an early notification thereof is earnestly solicited. If the Examiner has any questions, or if further issues remain to be resolved, the Examiner is respectfully requested to contact the undersigned at 404.815.6218 prior to issuance of any final Office action.

The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Order Account No. 11-0855.

Respectfully submitted,



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MARKED UP COPY OF AMENDMENTS
IN THE SPECIFICATION

Page 16, lines 2-14:

Fig. 2 is a schematic side elevation view illustrating one method of production of flooring 10. Beginning at the left side of Fig. 2, fabric backing 22 unrolls from a roll 24 and passes under a doctor blade 26 or other metering device that meters a desired thickness of urethane foam 28 or other material onto backing 22 to form a resilient layer 18 on top of fabric backing 22. Heat, indicated by arrows 30, may be applied to the underside of the advancing web of backing 22 and resilient layer 18 to accelerate curing of resilient layer 18. A web of reinforcement 20 is unrolled from roll 32 and passes around a roller 34 which presses the reinforcement web [22] 20 into contact with the upper surface of resilient layer 18 so that it will be bonded to resilient layer 18. As is indicated by arrow 36, roll 34 may be positioned as desired nearer or further from doctor blade 26, so that reinforcement web 20 may be married to resilient layer 18 in a position selected by reference to the stage of curing of resilient layer 18 that has been achieved.

Page 16, lines 25-26:

Each of woven fabric 12, precoat 14, backing layer 16, resilient layer 18, reinforcement web 20 and backing fabric 22 are described below in detail. It will be understood, however, that the arrangement of these layers may be varied to include disposition of the resilient layer between the woven fabric and the backing layer.

Page 27, lines 5-9:

If desired, a fabric [12] stabilizing layer (not shown in Fig. 1 but shown in Figs. 3 and 7) of fiberglass (such as DURA-GLASS® 7613 non-woven fiberglass fleece sold by Schuller Mats & Reinforcements, P. O. Box 517, Toledo, Ohio 43687-0517) may be bonded to the underside of fabric 12 with precoat 14 or an alternative adhesive material.

Page 31, beginning at line 15:

Fig. 4 is a side elevation, schematized view of apparatus for producing a "face cloth" 118 in accordance with this invention. Face cloth 118 has a woven fabric [112] 12 bonded to a stabilizing substrate or layer 114 with polyvinyl chloride adhesive 128. A roll 120 of woven fabric [112] 12 is unwound into an accumulator 122 and travels from there to a conveyor belt 124 on which woven fabric [112] 12 lies as it moves from left to right in Fig. [2] 4. Meanwhile, stabilizing layer 114 is unwound from roll 26 and initially travels right to left in Fig. 4 in order for a layer of polyvinyl chloride 128 to be applied to it by a vinyl applicator 130. Vinyl 128 may typically be applied to stabilizing layer 114 in a layer approximating 5 to 100 ounces per square yard, preferably 10 to 50 ounces per square yard, and most preferably 20 to 30 ounces per square yard. Stabilizing layer 114 with polyvinyl chloride 128 applied thereto is married to woven fabric 12 by, for instance, pinching stabilizing layer 114 and woven fabric 12 between a roller 132 and conveyor belt 124. The thus-married composite of woven fabric 12 and stabilizing layer 114 with polyvinyl chloride 128 there between then passes through a heating zone 134 and a cooling zone 136 to produce composite face cloth 118 that may be accumulated in a roll 138.

IN THE CLAIMS

8. (Amended) The floor covering of claim 4, in which the polyester yarn comprises [PTT] poly(trimethylene terephthalate) yarn.
10. (Amended) The floor covering of claim 9, in which the precoat comprises [highly] frothed ethylene vinyl acetate or acrylic latex.
11. (Amended) The floor covering of claim 10, wherein the precoat is formed by applying a [highly] frothed ethylene vinyl acetate or acrylic latex to the underside of the woven fabric top layer.
19. (Amended) The floor covering of claim 1, further comprising a resilient layer positioned between the fabric top layer and the backing [layer] fabric.